

DEC 31 2013

RUTH WILLINGHAM, CLERK
BY SB

IN THE COURT OF APPEALS

STATE OF ARIZONA

DIVISION 1

STATE OF ARIZONA,
Plaintiff,

v.

(INMATE'S NAME)

ROBERT LEON POLMANTER,
Defendant

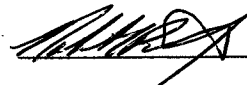
No. 1 CA CR-13-0943 PRP

No. CR 2012-006712-003 DT

PETITION FOR REVIEW

Pursuant to Rule 32.9(c) of the Arizona Rules of Criminal Procedure, Defendant requests that the Arizona Court of Appeals review the decision of the trial court in the above entitled cause entered November 21, 2013. This petition is based on the following memorandum of points and authorities.

DATED this 9th day of December, 20 13.



MEMORANDUM OF POINTS AND AUTHORITIES

I. SYNOPSIS OF THE TRIAL COURT'S RULINGS.

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3 II. ISSUE PRESENTED FOR REVIEW.

4 *See Rule 32 - explanation - was forced and miss Represented*
5 *By court appointed lawyer. Was not Allowed Replacement*
6 *Lawyer.*
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15 III. FACTS MATERIAL TO THE ISSUE PRESENTED.

16 *If lawyer would have seperated me from case. different outcome.*
17 *Settlement Conference Judge said should only Receive 2 years doc.*
18 *2 years supervised probation. My Attorney Told that judye if*
19 *my client doesn't accept the plea for 5.5 years Doc 5 year probation*
20 *He would see that the client (myself) get 20 year D.C.*
21 *See Complaint Filed with ARIZONA State Bar ASSOCIATION*
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1 IV. REASONS WHY THIS COURT SHOULD GRANT THE PETITION.

2 I MISAMEANT prior BACK in 1993

3 HAVE never Broken law since outside of a few
4 TRAFFIC Tickets.

5 When I Broke the law I was going threw a major
6 Divorce. which caused Business to shut down. No one
7 would hire me at the time. Was TRYING to make
8 legal money to pay for the divorce. So I BECAME
9 a CAB driver and that how it started.

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15 V. CONCLUSION.

16 I've done two years would like to get out pay my fines
17 make Restitution to cover the ~~loss~~ loss to the Businesses quicker.
18 And would like to Be a proper Tax paying Business man and
19 Father again.

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RESPECTFULLY SUBMITTED this 9 of December, 2002013

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(ADC REV. 01/31/03)

Certificate of Service
Original plus 2 copies
to court on December 9, 2013
Superior Court
201 W. Jefferson
Phx AZ 85003

1 copy mailed on December 9, 2013
Arizona Attorney General
1275 W. Washington
Phx AZ 85007

Certificate of Compliance

Pursuant to Rule 32.9 (C)
of the Arizona Rules of
Criminal Procedure, Defendant
files Petition for Review

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-006712-003 DT

11/21/2013

HONORABLE JANET E. BARTON

CLERK OF THE COURT
A. Ocanas
Deputy

STATE OF ARIZONA

ROBERT E PRATHER

v.

ROBERT LEON POLMANTEER (003)

ROBERT LEON POLMANTEER
#276670 ASPC YUMA COCOPAH
PO BOX 8910
SAN LUIS AZ 85349

COURT ADMIN-CRIMINAL-PCR

MINUTE ENTRY

The Court has reviewed Defendant's Petition for Post-Conviction Relief and the State's Response thereto. Defendant has not filed a reply in support of his Petition and his time for doing so has expired.¹ This is Defendant's first Rule 32 proceeding. With respect to Defendant's Petition, the Court now rules as follows.

On October 23, 2012, the Court accepted Defendant's guilty pleas to eight (8) separate counts (counts 31, 33, 36, 38, 40, 42, 44 and 46) of fraudulent schemes and artifices, each being a Class 2 felony. At the sentencing hearing on November 26, 2012, Defendant, as stipulated in the plea, received 5.5 years in prison on counts 31, 33, 36, 40, and 42, each sentence to run concurrent. Defendant also received a 5 year probation tail on counts 38, 44 and 46, to begin upon his absolute discharge from prison on the other counts. Again, these probationer terms all ran concurrent with each other.

¹ Defendant's reply was due on or before September 11, 2013. See Minute Entry dated August 27, 2013.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-006712-003 DT

11/21/2013

On August 12, 2013 Defendant file his Petition for Post-Conviction Relief. Defendant has chosen to represent himself in these proceedings.

In his Petition for Post-Conviction Relief, Defendant raises the following four arguments:

1. His trial counsel was ineffective;
2. The plea was unlawfully induced;
3. The Court lacked jurisdiction in this matter; and
4. Defendant was denied his speedy trial rights.

For the reasons set forth below, the Court finds that none of Defendant's arguments are colorable.

1. Ineffective Assistance of Counsel

Defendant claims that his trial counsel was ineffective because he contacted Defendant's son, who is a minor and scared him into thinking he wouldn't see his father again if he did not sign the plea; told Defendant that because he was only getting paid \$19,000 he was only going to do \$19,000 worth of work; and threatened Defendant that if he did not sign the plea he would do 20 years and not see his children. *See* Petition for Post-Conviction Relief.

A successful claim of ineffective assistance of counsel requires proof that counsel's performance was deficient under prevailing professional norms, and, as a result of such deficient performance, the defendant was prejudiced. *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). To establish prejudice by an allegedly deficient performance, a defendant must establish that but for counsel's unprofessional errors, the result of the proceeding would have been different. *State v. Carver*, 160 Ariz. 167, 174, 771 P.2d 1382, 1389(1989).

Moreover, when a defendant pleads guilty pursuant to a plea agreement, the defendant waives all non-jurisdictional defenses and defects that occurred prior to the plea, including deprivations of constitutional rights. Such a defendant also waives all claims of ineffective assistance of counsel, other than those related to the validity of the plea. *Tollett v. Henderson*, 411 U.S. 258, 267, 93 S.Ct. 1602 (1973); *State v. Hamilton*, 142 Ariz. 91, 94, 688 P.2d 983, 986 (1984); and *State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993).

The Court is of the opinion that Defendant's claims of ineffective assistance of counsel are waived because they do not pertain to matters directly relating to the entry of the pleas but, rather to other aspects of the representation. However, even assuming that these claims were not

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-006712-003 DT

11/21/2013

waived and that counsel did the things Defendant claims he did, Defendant has still not raised a colorable claim that he was prejudiced.

In that regard, Defendant fails to explain how counsel's alleged deficiencies impacted the outcome of his case. Indeed, Defendant complained of many of these issues at the time of sentencing in a letter Defendant presented to the Court. *See* Defendant's letter to the Court that was filed with Defendant's Pre-Sentence Report. After hearing about these issues from Defendant at the sentencing hearing, the Court specifically asked Defendant if he wanted to go forward with the plea. Defendant avowed that he did. *See* 11/26/12 Minute Entry.

In addition, at the change of plea hearing, when Defendant was also aware of the conduct of which he is now complaining, Defendant affirmatively stated to the Court that no one had threatened him or forced him to enter into the plea. Moreover, based upon what Defendant said at the change of plea hearing, the Court specifically found that Defendant's pleas were knowingly, intelligently and voluntarily made. *See* Transcript from 10/23/12 hearing.

Based on the foregoing, Defendant simply has not presented a colorable claim of ineffective assistance of counsel.

2. Unlawfully Induced Plea

This claim is apparently based upon the same facts as Defendant's ineffective assistance of counsel claim. The Court finds that this claim is not colorable for the same reasons the Court found that Defendant's ineffective assistance of claim was not colorable.

3. Lack of Jurisdiction

Defendant contends that this Court lacked jurisdiction because Defendant took the proceeds from his crime across state lines and, therefore, only the federal court has jurisdiction. Defendant is wrong.

At the change of plea hearing, Defendant admitted that the crimes to which he pled guilty occurred between December 16, 2009 and July 5, 2010 in Maricopa County, Arizona.

Specifically, Defendant acknowledged that between those dates in Maricopa County, Arizona he engaged in a scheme to defraud by defrauding pawn stores located in Maricopa County, by representing to those entities that jewelry was gold when, in actuality, it was not gold and had simply been made to look like it was. *See* Transcript from 10/23/12.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-006712-003 DT

11/21/2013

As is clear from the foregoing, this Court had jurisdiction over the crimes to which Defendant pled guilty. Consequently, Defendant's claim of lack of jurisdiction is not colorable.

4. Denial of Speedy Trial Rights

Finally, Defendant contends that his right to a speedy trial was denied because the Indictment in this case was filed approximately one year and eight months after the date of the last crime charged.² The Court is of the opinion that this claim was waived. However, even if it was not waived by the entry of Defendant's guilty pleas, the Court finds as a matter of law that in this matter Defendant's speedy trial rights were not violated

For the reasons set forth above, Defendant has failed to set forth a colorable claim for relief. Therefore,

IT IS ORDERED denying Defendant's Petition for Post-Conviction Relief.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.

² The Indictment was filed on April 5, 2012 and the date of the last crime charged against Defendant was August of 2010. See Indictment at Count 73.